Trujillo v. Apple Computer, Inc. et al Doc. 150

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE TRUJILLO, individually and on behalf of all others similarly situated, Plaintiff, vs. APPLE COMPUTER, INC., a California Corporation, and AT&T MOBILITY LLC, a Georgia Corporation, Defendants.	)	Case No. 1:07-CV-04946 Judge Kennelly Mag. Judge Ashman

DEFENDANT AT&T MOBILITY LLC'S MOTION TO STAY BRIEFING ON PLAINTIFF'S MOTION FOR CLASS CERTIFICATION PENDING RESOLUTION OF AT&T MOBILITY LLC'S MOTION FOR SUMMARY JUDGMENT

Defendant AT&T Mobility LLC ("ATTM") respectfully moves this Court to stay briefing on plaintiff's motion for class certification pending this Court's ruling on ATTM's motion for class certification. In support thereof, ATTM states as follows:

1. Plaintiff Jose Trujillo filed his first amended complaint against ATTM and Apple, Inc. ("Apple") in this action on September 6, 2007 and filed a motion for class certification on September 11, 2007. On January 17, 2008, Trujillo's motion for class certification was withdrawn. On September 23, 2008, the Court granted summary judgment to defendant Apple on all of Trujillo's claims.

2. On November 25, 2008, Trujillo re-filed his motion for class certification, (changing only the plural "defendants" to the singular "defendant"). On December 16, 2008, this Court set a briefing schedule on the motion for class certification. Under the schedule, Trujillo's memorandum in support of class certification is due by January 13, 2009, ATTM's response is

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due by February 13, 2009, and Trujillo's reply is due by February 27, 2009. On January 8, 2009, Trujillo filed a motion requesting an extension of time to write his brief in support of his motion for class certification. In his motion, Trujillo requested an extension until March 28, 2009, in order for him to complete class discovery and file a memorandum in support of his motion for class certification. Trujillo's motion for an extension is noticed for presentment on January 20, 2009.

3. Trujillo's amended complaint alleges that the manner in which Apple and ATTM disclosed the details of Apple's battery-replacement program for the iPhone that Trujillo purchased at the Apple store violates the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/1 *et seq.* Trujillo also raises a variety of common law and breach-of-warranty claims. In September 2008, the Court granted summary judgment to Apple on all of Trujillo's claims because, among other reasons, Apple in fact did disclose all of the allegedly concealed facts.

4. On January 9, 2009, ATTM moved for summary judgment against plaintiff for the same reasons that led this Court to reject Trujillo's claims against Apple, and because ATTM was not a party to the underlying iPhone sales transaction. ATTM's motion for summary judgment is noticed for presentment on January 20, 2009.

5. Courts routinely stay class certification proceedings pending determinations of dispositive motions. *See, e.g., Arreola v. Godinez*, 546 F.3d 788, 793 (7th Cir. 2008) ("[T]he County moved for summary judgment and requested a stay of class certification pending the district court's resolution of the motion for summary judgment . . . . The district court granted the County's request, stayed the class-certification motion, and set a briefing schedule on the summary-judgment motion."); *Cowen v. Bank United of Texas, FSB*, 70 F.3d 937, 941 (7th

Cir.1995) ("A decision that the claim of the named plaintiffs lacks merit ordinarily . . . disqualifies the named plaintiffs as proper class representatives. The effect is to moot the question whether to certify the suit as a class action unless the lawyers for the class manage to find another representative.").

6. Federal Rule of Civil Procedure 23(c)(1)(A) provides that the Court must determine by order whether to certify the action as a class action "at an early practicable time after a person sues or is sued as a class representative." Fed. R. Civ. P. 23(c)(1)(A). The Advisory Committee Notes to the 2003 amendment changing Rule 23(c)(1)(A)'s language from "as soon as practicable" to "at an early practicable time" list many "valid reasons" that justify deferring the certification decision. Fed. R. Civ. P. Advisory Committee Notes, 2003 Amendments, Rule 23(c)(1). A consideration the Advisory Committee recognized in amending Rule 23(c)(1)(A) is that "[t]he party opposing the class may prefer to win dismissal or summary judgment as to the individual plaintiffs without certification and without binding the class that might have been certified." *Id.*

7. Even before the 2003 amendment to Rule 23(c)(1), the Seventh Circuit had noted the propriety of a district court ruling on summary judgment prior to class certification, holding that if the defendant is "content to oppose the members of the class one by one, as it were, by moving for summary judgment," it is entitled to do so. *Cowen*, 70 F.3d at 941–42. The Seventh Circuit observed that seeking summary judgment prior to a decision on class certification is a "recognized tactic" and that Rule 23(c)(1)'s "practicable" term "allows for wiggle room." *Id.* at 941. Thus, proceeding with ATTM's summary judgment motion prior to briefing the class certification motion, as this Court did with Apple's motion for summary judgment, is fully consistent with governing law.

8. It would be wasteful and burdensome for ATTM and Trujillo to conduct class discovery and to brief the contested class certification issues when this Court may ultimately agree with ATTM on its motion for summary judgment, which would then moot the question of whether to certify the action. *Cowen*, 70 F.3d at 941. If the Court does not ultimately agree with ATTM on its motion for summary judgment, Trujillo will not have been harmed or prejudiced by a short stay of the motion for class certification.

WHEREFORE, defendant ATTM respectfully requests that this Court stay the briefing on plaintiff Trujillo's motion for class certification pending the determination of ATTM's motion for summary judgment.

Dated: January 14, 2009

Respectfully submitted,

/s/ Emily M. Emerson

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CERTIFICATE OF SERVICE

I, Emily M. Emerson, an attorney, hereby certify that on January 14, 2009, I electronically filed the foregoing **DEFENDANT AT&T MOBILITY LLC'S MOTION TO STAY BRIEFING ON PLAINTIFFS' MOTION FOR CLASS CERTIFICATION PENDING RESOLUTION OF AT&T MOBILITY LLC'S MOTION FOR SUMMARY JUDGMENT** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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